

example, in W.Va.Code §4-1A-8, the Legislature identified the following actions by legislators that are not so protected:

Legislative immunity does not extend to activities by legislators that are without lawful authority under constitutional law, statutory law or rules of the legislature, including, but not limited to, the following:

(1) Using an unconstitutional procedure to enact legislation;

(2) Conducting an illegal investigation or an unlawful search or seizure;

(3) Performing another otherwise valid legislative act without proper legislative authority;

(4) Filing a false or incomplete report, disclosure or claim regarding an otherwise valid legislative act; or

(5) Using legislative office for private gain in violation of the provisions of chapter six-b of this code that define and enforce governmental ethics.

19. While this list is not all inclusive, there is nothing to suggest that a legislator, who is attempting to enter the chambers of the House of Delegates to be seated during the legislative session, is barred from asserting legislative immunity for doing so.
20. The West Virginia Supreme Court has never issued any decision applying and interpreting any of these legislative immunity statutes. Defendant has found a case from another jurisdiction where a legislator accused in a civil action of committing a battery on a witness appearing at a committee was successful in having the civil action dismissed based upon legislative immunity. *Allen v. Superior Court of California*, 171 Cal.App.2d 444, 340 P.2d 1030 (1959).
21. Our Constitution, legislative rules and our statutes grant unique privileges to legislators doing legislative sessions. Our founding fathers knew that protecting legislators to assure they are free to participate in legislative proceedings was critical.